* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 15.03.2018
Judgment pronounced on: 20.08.2018

\+ W.P.(C) No.9014/2017

DR. POORNIMA ADVANI & ANR .... Petitioners
Through: Mr.Abhishek Puri with Ms. Surbhi Gupta and Mr. V. Siddharth, Advocates.

versus

GOVT. OF NCT OF DELHI & ANR ..... Respondents
Through: Mr. Ramesh Singh, Standing Counsel for Govt. of NCT of Delhi with Mr. Chirayu Jain and Mr. Rajat Malhotra, Advocates.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J.

Prefatory facts:

1. This writ petition is directed against the order dated 21.10.2016 issued by the Collector of Stamps (HQ.) represented by respondent No.1/Govt. of NCT of Delhi. By virtue of this order, the Collector of Stamps (HQ.) has rejected the application preferred by the petitioners for a refund of stamp duty amounting to Rs.28,10,000/-, on account of the loss of e-stamp certificate bearing No.IN-DL67287494587124O, dated 6.7.2016 (hereafter referred to as 'stamp paper').

2. The sole ground on which the application filed by the petitioners for refund of stamp duty stands rejected, is that, there is no provision in the

Indian Stamp Act, 1899 (for short "the Act") to allow refund of stamp duty in cases where e-stamp paper is lost.

3. The impugned order while recognizing the fact that the e-stamp paper has been locked/cancelled goes on to say that the possibility of its misuse cannot be ruled out. This in sum forms the rationale, based on which, the petitioners' request for refund of stamp duty stands rejected. Therefore, the only question that arises for consideration is: whether or not the petitioners' request for grant of refund of stamp duty is sustainable, a request which emanates on account of loss of e-stamp paper?

4. In order to adjudicate upon the aforesaid issue, the following brief facts are required to be noticed:

4.1 The petitioners, who, were desirous of purchasing an immovable property described as: Unit No.4B, 4th Floor, Plaza M6, Plot No.06, Non-Hierarchical Commercial Centre, Jasola, New Delhi (hereafter referred to as "property"), purchased an e-stamp paper dated 6.7.2016, valued @ Rs.28,10,000/-.

4.2 The money for this purpose was paid out from the joint bank account of the petitioners.

4.3 Pertinently, the e-stamp paper dated 6.7.2016 purchased by the petitioners, sets down the following details:

(i) Particulars of the property, which was proposed to be purchased; (ii) the names of the parties, who intended to execute the sale deed; (iii) the consideration to be paid for consummating the sale transaction; and (iv) the value of e-stamp paper.

4.4 According to the petitioners, though initially, the intention was to execute the sale deed concerning subject property in July, 2016, since, there was some delay in closing the loan transaction via which the transaction was to be funded, the execution of the sale deed was delayed.

4.5 This delay proved to be fatal, inasmuch as, on 4.8.2016, the petitioners were told by the broker, who had the custody of the e-stamp paper, that the e-stamp paper dated 6.7.2016 had been misplaced.

4.6 The petitioners realizing the enormity of the loss, filed a complaint with the Crime Branch, Delhi Police, on that very day i.e. 4.8.2016. As a follow up action, on 06.08.2016, the petitioners got public notices issued in two newspapers, namely, Asian Age (English edition) and Rashtriya Sahara (Hindi edition).

4.7 Since, the petitioners were desirous of taking the sale transaction in respect of subject property forward, they were left with no choice but to purchase a fresh e-stamp paper, which they did, on 6.8.2016.

4.8 This stamp paper bore the No.IN-DL80459288277224O. The money for this was also paid out from the joint account of the petitioners, maintained with the State Bank of India.

4.9 Consequent thereto, on 8.8.2016, the petitioners and the vendor i.e., M/s. Scud Finlease Limited executed a sale deed.

5 On 11.8.2016, the petitioners filed an application with the Sub-Divisional Magistrate, Collector of Stamps, for refund of stamp duty amounting to Rs.28,10,000/- on account of loss of the e-stamp paper dated 6.7.2016.

5.1 The prayer made in the application was that the amount be refunded to the petitioners after deducting the usual cancellation charges, if any. The application was accompanied by an affidavit of petitioner No.2 that the e-stamp paper dated 6.7.2016 has been lost and was not traceable despite best efforts.

5.2 Furthermore, an indemnity bond was also executed by petitioner No.2, whereby he undertook to indemnify the respondents, if the stand taken by him that the e-stamp paper dated 6.7.2016 had been lost, proved to be incorrect and, as a result thereof, any loss/damage, etc. was suffered by them.

5.3 Since, no action was taken on the petitioners' application dated 11.8.2016, the petitioners addressed a letter dated 8.9.2016 to respondent No.2. In this letter, apart from anything else what was sought to be highlighted by the petitioners were two aspects: first, given the fact that every transaction is made in electronic form, it could be verified almost instantaneously; and second, the misplaced or lost e-stamp paper dated 6.7.2016 could not be used for any other purpose except that, which stood specified in the e-stamp paper. It was emphasized that given the fact that via a fresh e-stamp paper dated 6.8.2016, transaction *qua* the stamp paper dated 6.7.2016 had been consummated, the lost e-stamp paper had lost its legal efficacy and thus, could not be misused by anyone else.

5.4 As is evident that both these assertions were made by the petitioners to allay the apprehensions of respondent No.2.

5.5 However, the petitioners' plea for refund of stamp duty did not cut much ice with the respondents and, consequently, vide order dated 21.10.2018, the Collector of Stamps (HQ) rejected the petitioners' application dated 11.8.2016 maintained for refund of stamp duty.

6 Aggrieved by the impugned order dated 21.10.2016, the petitioners have preferred the instant writ petition.

7 Notice in the petition was issued on 13.10.2017. On return of notice i.e., 1.3.2018, Mr. Ramesh Singh, learned standing counsel, entered appearance on behalf of the respondents. On that date, the learned counsel sought to file a counter affidavit in the matter. Consequently, time was granted not only to the respondents to file the counter affidavit, but opportunity was also given to the petitioners to file a rejoinder in the matter. Besides that, counsels for both the parties were directed to file their written submission in the matter.

8 A close perusal of the counter affidavit filed on behalf of the respondents, which is rather a brief, would show that the stand taken therein is similar to the stand taken in the impugned order. The stand taken, is that, since, there is no power vested in the respondents under the Act to

refund stamp duty on account of loss of stamp paper, refund of stamp duty cannot be directed.

8.1 To demonstrate that there is no power vested under the Act to refund stamp duty on account of loss of stamp paper, reference has been made to Sections 49, 50, 51, 52, 53 & 54 of the Act.

8.2 This apart, surprisingly, the respondents have also adverted to the fact that there are no details given vis-à-vis the complaint made to the police, though alongwith the application dated 11.8.2016 for refund, the NCR issued by the police authorities is appended as an enclosure. Besides this, at Page 37, Information Report lodged with the Crime Branch, Delhi Police, stands appended.

8.3 I may only note that, perhaps, given the fact that the Information Report stood appended to the petition, quite correctly, no arguments were advanced by Mr. Ramesh Singh on behalf of the respondents on this aspect of the matter.

8.4 Furthermore, the respondents also referred to the application form to highlight the fact that in order to claim the refund, one of the documents which was required to be mandatorily appended was the original e-stamp paper.

8.5 On the other hand, the petitioners, in their rejoinder, apart from reiterating their assertions, made in the petition, highlighted the fact that in the impugned order itself, there is a reference to the fact that the petitioners' application dated 11.8.2016 was accompanied by an NCR lodged with Crime Branch, Delhi Police, on 4.8.2016.

8.6 The petitioners further emphasized the fact that the requirement to append the original e-stamp paper along with the application for refund could only be directory as one of the grounds on which stamp duty can be refunded is when the stamp paper is 'obliterated'. According to the petitioners, this ground for seeking refund was available under Section 49(a) of the Act and therefore, if the provisions of refund application-form are strictly complied with, then no refund would be available in such like cases, despite the Act making a provision qua the same.

8.7 The petitioners, in order to buttress their submissions, relied upon the order dated 11.3.2015, passed by the Office of Divisional Commissioner, Delhi, under which the proforma for refund of e-stamp paper was issued. Emphasis was laid on the fact that the Collector of Stamps (HQ) would order for refund only after he had verified the status of e-stamp by visiting the online portal of Stock Holding Corporation of India (SHCI). The purpose with which reference was made to the order dated 11.3.2015, by the petitioners, was to convey that filing of the original e-stamp paper was not necessary.

8.8 The petitioners in support of their contentions relied upon the photocopy of the lost/misplaced e-stamp dated 6.7.2016. The stand taken was that based on what was stated therein i.e., the Collector of Stamps (HQ) could verify its status.

Submissions of counsel:

9 Given the aforesaid facts and circumstances, arguments on behalf of the petitioners were advanced by Mr. Abhishek Puri, while those on behalf of the respondents were made by Mr. Ramesh Singh.

10 Mr. Puri, apart from reiterating the facts set out hereinabove, which form part of the record emphasized the fact that since the sale deed had not been executed by having it engrossed on the lost misplaced e-stamp paper dated 6.7.2016, the charging event had not occurred and therefore, the amount available with the respondents being not in the nature of stamp duty, it would have to be refunded to the petitioners.

10.1 It was argued that stamp duty under Section 3 of the Act was leviable only on instruments. For this purpose, reliance was placed on the provisions of Section 3, Section 2(6), Section 2(12) and Section 2(14) of the Act.

10.2 The submission was that only when an instrument is executed upon it being signed or signatures being appended thereon, would a chargeable event occur.

10.3 In other words, since the e-stamp paper dated 6.7.2016 was lost prior to the sale transaction being engrossed upon it and signatures being appended thereon in affirmation of consummation of the transaction reflected therein, the charging event which would validate retention of stamp duty had not occurred.

10.4 According to Mr. Puri, in such a situation, unless the respondents could show that it had suffered a loss or damage, it could not retain the amount collected in anticipation of taxable event occurring. It was Mr. Puri's contention that, the impugned action of the respondents of retaining the amount *de hors* the occurrence of the taxable event as envisaged under Section 3 of the Act violated mandate of Article 265 of the Constitution.

10.5 In support of this submission, Mr. Puri placed reliance on the following judgments:

> ***Hindustan Lever & Anr. vs. State of Maharashtra & Anr.* (2004) 9 SCC 438 (at Paragraph 40); *Piyush Aggarwal & Anr. Vs. Government of NCT of Delhi & Ors.* 2005 (81) DRJ 186 (at Paragraph 7); *Union of India vs. Delton Cable company* ILR (1975) 2 Del. 142 (at Paragraph 4); *State of Rajasthan & Ors. vs. Khandaka Jain Jewellers* (2007) 14 SCC 339 (at Paragraph 20); *CIT, Madras vs. The Ajax Products Ltd.* (1965) 1 SCR 700 (at Paragraph 14); *Indian Banks' Association, Bombay & Ors. vs. Devkala Consultancy Service and Ors.* (2004) 11 SCC 1 (at Paragraph 18 & 21)** and ***Salonah Tea Co. Ltd. & Ors. vs. Supdt. Of Taxes, Nowgong & Ors.* (1988) 1 SCC 401 (at Paragraph 412)**.

10.6 This apart, it was argued that the petitioners' case would also fall under Section 49(a) of the Act, which allows for refund of stamp duty in cases where the stamp on any paper is inadvertently and undesignedly spoiled, obliterated, or by error in writing or by any other means rendered unfit for the purpose it is intended before any instrument written thereon is executed by any person.

10.7 The submission was that Section 49(a) of the Act should be construed liberally and more importantly practically in line with the advancement in technology to bring the instant case, which is one of loss of e-stamp paper within its ambit.

10.8 In support of this submission, reliance was placed on the judgment of the Punjab and Haryana High Court rendered in ***Sudhir Jindal and Ors. vs. State of Haryana & Ors.*****, 2010 SCC Online P&H 4291 (at Paragraph 3).**

10.9 Lastly, on behalf of the petitioners, it was highlighted that the reason given in the impugned order that there was a possibility of misuse of the loss of e-stamp paper, despite it being locked and cancelled – was unsustainable and without merit.

11 It was contended that since the details pertaining to parties and the property *qua* which the transaction had to take place stood recorded in the stamp paper and given the fact that transaction *qua* the subject property stood reflected in the new e-stamp paper dated 6.8.2016, the lost e-stamp paper dated 06.07.2016 could not be utilized again as was sought to be contended on behalf of the respondents.

11.1 Besides this, the fact that an NCR has been lodged and public notice had been issued, as also, indemnity bond had been executed, according to Mr. Puri, fully secured the position of the respondents.

12 On the other hand, on behalf of the respondents, while Mr. Ramesh Singh conceded that the chargeable event had not occurred as the lost e-stamp paper was not engrossed and executed by appending signatures of the concerned parties thereon, refund could not be ordered as there was no provision for grant of refund in the Act.

12.1 According to the learned counsel, the Act was a complete code and therefore, refund if any, could be ordered only with respect to instances provided in the Act. It was Mr. Ramesh Singh's submission that when a privilege is conferred by a statute, the same ought to be confined to the extent provided in the statute. It was, thus, contended by Mr. Singh that right to refund was a privilege provided under the Act and therefore, the refund if at all could be provided only in accordance with the provisions of the statute.

12.2 In support of the aforesaid submission, learned counsel sought to place reliance on the following judgments:

> ***Mafatlal Industries Ltd. & Ors. vs. Union of India & Ors.*** **(1997) 5 SCC 536; *State of Maharashtra & Ors. vs. Swanstone Multiplex Cinema Pvt. Ltd.*** **(2009) 8 SCC 235 (at Paragraphs 25, 26)** and ***Cooch-Behar Contractors' Association and Ors. vs. State of West Bengal & Ors.*** **(1996) 10 SCC 380 (at Paragraphs 5, 8 & 9).**

12.3 It was further submitted by Mr. Ramesh Singh that while Chapter V of the Act made provisions for allowances/refund of stamp in various circumstances, which included both, pre and post execution of an instrument, none of them, according to the counsel, contemplated a situation for grant of refund in the absence of production of the original stamp paper.

12.4 In other words, according to the learned counsel, even though allowances/refund did not contemplate occurrence of a prior chargeable event, Chapter V does not make a provision for refund where the original stamp paper cannot be produced.

12.5 Learned counsel, thus, contended that the Collector of Stamps being a creature of the Act, he could not have granted refund where there was loss of stamp paper, as there was no provision qua the same in Chapter V of the Act. The Collector of Stamps, according to Mr. Ramesh Singh, had no inherent jurisdiction, his power, being circumscribed by the statute. In support of this submission, reliance was placed by Mr. Ramesh Singh on the judgment rendered in the matter of: ***Sri Maganti Suryanarayana vs. The Board of Revenue, Govt. of Andhra Pradesh*****, AIR 1976 AP 150 (at para 15 & 51)**.

12.6 Mr. Ramesh Singh also contended that the petitioners could not take aid of Section 72 of the Contract Act, 1872 ('Contract Act') inasmuch as the Act was a complete code in itself and that the instant case, was neither a case of mistake or coercion nor did the plea for refund arise on account of levy being declared illegal or unconstitutional.

12.7 For this proposition as well, Mr. Singh sought to place reliance upon the judgment of Supreme Court in ***Mafatlal Industries Ltd***. Furthermore, learned counsel contended that since stamp duty was a tax, hardships if any, suffered by the petitioners could not be considered while examining the plea for refund. The emphasis was that there was no equity in tax. Reliance, qua this proposition was laid on the judgment rendered by the Supreme Court in ***Govt. of A.P. & Ors. vs. P. Laxmi Devi (Smt.)*** **(2008) 4 SCC 720** (at para 19).

12.8 Insofar as the judgment rendered by a Single Judge of this Court in ***Piyush Aggarwal*** is concerned, Mr. Singh, submitted that the same required reconsideration for the following reasons:

(i) Firstly, it failed to notice the legal regime of the Act; and

(ii) Secondly, the Court wrongly relied upon Article 265 of the Constitution, as the refund did not arise on the ground that the levy had been declared illegal or unconstitutional.

12.9 Besides this, Mr.Ramesh Singh contended that the judgment rendered in ***Piyush Aggarwal's*** case was distinguishable for the reason that it did not deal with the facts as they obtained in the present case, which is, that the original stamp paper itself was not available.

<u>Analysis and Reasons:</u>

13 I have heard learned counsel for the parties and perused the record. Before I proceed further, it needs to be emphasized that stamp duty is

leviable on instruments chargeable with duty. The chargeable event occurs only when the instrument is executed. The stamp duty imposed, may either be fixed or *ad valorem* depending on what is provided by the legislature. The basis for arriving at *ad valorem* stamp duty, that is, its computation is also an aspect which the legislature decides, which could be based, *inter alia,* on market value of the property transferred. [See *Hindustan Lever & Anr. vs. State of Maharashtra and Anr.* at Page 459 (Para 40)]

13.1 This conclusion, one can easily reach by reading, conjointly, the following provisions of the Act.

13.2 Sections 3, adverts to the fact that the duty is payable on instruments.

13.3 Section 2(6), defines the expression "chargeable". The expression chargeable means: when applied to an instrument at the point in time when it is executed and where several persons are involved in executing an instrument, *albeit*, at different points in time, when it is first executed.

13.4 Section 2(12), which, defines the expression "executed" and "execution", provides that these expressions when used in conjunction with an instrument would mean when they are signed or signatures are put on it.

13.5 And finally, Section 2(14) of the Act, which defines the expression "instrument", takes within its ambit every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded. The definition being inclusive, does not, quite obviously, exhaust the possibility of what could be construed as an instrument in law.

13.6 Therefore, to put it simply, any instrument which includes a document, which, creates, transfers, limits, extends, extinguishes or records any right or liability, upon it being signed by parties concerned, will result in a charging event occurring, leading to the requisite stamp duty being attracted upon such an event occurring.

14 In the instant case, the facts as they have emerged, demonstrate that before an instrument could be engrossed upon the e-stamp paper dated 6.7.2016, it was lost and, therefore, by logical corollary, the taxing event did not occur.

15 As a matter of fact, the scheme of Chapter V of the Act which deals with allowances, that is, refund of stamp duty, in certain circumstances, in fact, fortifies the principle that no tax can be collected without the authority of law; a statement of law which finds resonance in Article 265 of the Constitution.

15.1 The reason I say so is based on the provisions of Chapter V of the Stamp Act.

15.2 Section 49(a), *inter alia*, provides that where stamp on any paper i.e. impressed stamp is inadvertently and undesignedly spoiled, obliterated or, by error in writing or any other means rendered unfit for the purpose intended ***"before"*** an instrument written thereon is executed by any person — is a circumstance amenable for refund of duty.

15.3 Likewise, clause (b) of Section 49 provides for another circumstance for refund of stamp duty, which is, when, stamp on any document gets spoiled though the document is written out wholly or in part but is ***"not"*** signed or executed by any party.

15.4 As would have been noticed above, the charging event had not occurred in both circumstances as the instrument had not been executed.

15.5 In contradistinction, clause (d) of Section 49 provides for instances where though charging event has occurred, (as in where the instrument has been executed) the Statute has still made room for grant of allowance and refund.

15.6 Section 49 of the Act, broadly, sets out circumstances where for one reason or the other, the transaction has become inefficacious. For the sake of convenience, the provisions referred to above are set-forth hereafter:

> *"49. **Allowance for spoiled stamps**.—Subject to such rules as may be made by [the [State Government]] as to the evidence to be required, or the enquiry to be made, the Collector may, on application made within the period prescribed in section 50, and if he is satisfied as to the facts, make allowance for impressed stamps spoiled in the cases herein after mentioned, namely:—*
>
> *(a) the stamp on any paper inadvertently and undesignedly spoiled, obliterated or by error in writing or any other means rendered unfit for the purpose intended before any instrument written thereon is executed by any person;*
> *(b) the stamp on any document which is written out wholly or in part, but which is not signed or executed by any party thereto;*
> *xxxxxxx*
> *(d) the stamp used for an instrument executed by any party thereto which—*

(1) has been afterwards found to be absolutely void in law from the beginning;
(2) has been afterwards found unfit, by reason of any error or mistake therein, for the purpose originally intended;
(3) by reason of the death of any person by whom it is necessary that it should be executed, without having executed the same, or of the refusal of any such person to execute the same, cannot be completed so as to effect the intended transaction in the form proposed;
(4) for want of the execution thereof by some material party, and his inability or refusal to sign the same, is in fact incomplete and insufficient for the purpose for which it was intended;
(5) by reason of the refusal of any person to act under the same, or to advance any money intended to be thereby secured, or by the refusal or non-acceptance of any office thereby granted, totally fails of the intended purpose;
(6) becomes useless in consequence of the transaction intended to be thereby effected being effected by some other instrument between the same parties and bearing a stamp of not less value:
(7) is deficient in value and the transaction intended to be thereby effected has been effected by some other instrument between the same parties and bearing a stamp of not less value:
(8) is inadvertently and undesignedly spoiled, and in lieu whereof another instrument made between the same parties and for the same purpose is executed and duly stamped:
Provided that, in the case of an executed instrument, no legal proceeding has been commenced in which the instrument could or would have been given or offered in evidence and that the instrument is given up to be cancelled.
Explanation.—The certificate of the Collector under section 32 that the full duty with which an instrument is chargeable, has been paid is an impressed stamp within the meaning of this section."

16 There are other instances of allowances provided under Chapter V. These instances are referred to in Sections 52 to 54 of the Act.

16.1 I do not wish to burden the judgment with the aforementioned provisions. Suffice it to say that the statutory scheme of Chapter V of the Act provides for refund of stamp duty, both, in cases where the instrument is executed, that is, where a chargeable event has occurred and also in certain circumstances, where a chargeable event has not occurred i.e. the instrument has not been executed.

16.2 The respondents, in the present case, have denied the petitioners refund of stamp duty only on the ground that the stamp paper is not available in physical form.

16.3 However, as noticed above, under Section 49 (a), the Legislature has gone as far as to grant refund in cases where the stamp on any paper is inadvertently and undesignedly spoiled and obliterated or even rendered unfit for the purpose it is intended to be used, *albeit* by other means.

16.4 What is pertinent is that the degree by which the stamp paper is either spoiled or obliterated or even rendered unfit is not adverted to in clause (a) of Section 49 of the Act. Therefore, if this circumstance is taken to its logical conclusion, the respondents would provide (of course, subject to inquiry), refund where an applicant has a piece of paper made available, which may or may not, look like a stamp paper. On the other hand, the respondents, as in the present case, would deny a similar benefit to a person who has lost the stamp paper only on the ground of his/her inability to produce the same in its physical form.

17 To overcome this impediment put forth by the respondents, the argument advanced by the petitioners is that loss of stamp paper would come within the ambit of the expression ‘obliterated’. To my mind this submission is not without merit. The plain meaning of the expression obliterate, inter alia, is ‘blot out’; ‘leaving no clear trace’; and ‘cause to disappear from view’ apart from erase, efface and cancel to prevent further use. (see: Shorter Oxford English Dictionary, 5 Edition, Vol-2, N-Z, page 1967).

17.1 Therefore, the immediate issue which arises for consideration is: should the expression ‘obliterated’ mean to include lost stamp paper?

17.2 The peculiar situation in which the petitioners are put in is somewhat similar to the one the appellant-landlord in ***Seaford Court Estates Ltd. vs. Asher (1949) 2 KB 481*** was put in. The appellant-landlord before the Court of appeal was claiming arrears of rent for a flat let out to defendant-Asher. The flat bore an annual rent of £250. The defendant - Asher sought to peg it at £ 175; which was, concededly, the standard rent. Counter claim was raised by the defendant - Asher on that basis. Resultantly, excess payments were sought to be recovered.

17.3 The Court was called upon to give, in this context, meaning to the expression ‘burden’ found in Section 2 (3) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (in short "1920 Act"). The admitted position was that in an earlier lease entered by the appellant - landlord with another tenant, the appellant - landlord had taken upon itself, *albeit*, gratuitously, to provide hot water without extra contribution from the tenant.

17.4 Therefore, if the appellant - landlord had disconnected the supply of hot water, the tenant could not have lodged a sustainable legal action, since, the contract made no provisions qua the same. In other words, the tenant was contingently liable to make provision for hot water himself. However, in the lease executed with the defendant - Asher, the appellant - landlord had undertaken the obligation to provide hot water.

17.5 Given these circumstances, the appellant - landlord under the 1920 Act could sustain its claim for increased rent, only if the Court were to hold that the expression 'burden' would include 'contingent burden'. The manner in which the Court tackled the issue is instructive as is borne out from the following felicitous observations of Lord Denning:

> *"....The question for decision in this case is whether we are at liberty to extend the ordinary meaning of "burden" so as to include a contingent burden of the kind I have described. Now this court has already held that this sub-section is to be liberally construed so as to give effect to the governing principles embodied in the legislation (Winchester Court Ld. v. Miller (I)); and I think we should do the same. Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the*

draftsmen of Acts of Parliament have often been unfairly criticized. A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it, and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give "force and life" to the intention of the legislature. That was clearly laid down by the resolution of the judges in Heydon's case, and it is the safest guide to-day. Good practical advice on the subject was given about the same time by Plowden in his second volume Eyston v. Studd. Put into homely metaphor it is this: A judge should ask himself the question: If the makers of the Act had themselves come across this ruck in the texture of it, how would they have straightened it out? He must then do as they would have done. A judge must not alter the material of which it is woven, but he can and should iron out the creases……"

(Emphasis is mine)

18 The judgment delivered by the Court of Appeal in ***Seaford Court Estates Ltd.***'s case has been followed by Indian Courts in several cases. One of these cases is the decision rendered by the Supreme court in ***Ahmedabad Municipal Corporation and Another Vs. Nilaybhai R. Thakore and Another, (1999) 8 SCC 139***.

18.1 This was a case where the Court was called upon to adjudicate whether Rule 7 of the Rules for admission to the medical college established by the Ahmedabad Municipal Corporation, offended Article 14 of the Constitution. Rule 7, as framed, excluded students who were, otherwise, residing within the limits of Ahmedabad Municipal Corporation from being considered for admission to the medical college, if they had not qualified from high-schools situate within the Ahmedabad Municipal limits. Thus students who had passed SSC/new SSC examination from schools which were located within the limits of Ahmedabad Urban Development Area (AUDA) could not secure admission to the medical college.

18.2 Consequently, challenge was laid to Rule 7 before the Gujarat High Court. The Gujarat High Court struck down Rule 7, inter alia, on the ground that it offended Article 14 of the Constitution.

18.3 The matter was carried in appeal to the Supreme Court. The Supreme Court affirmed the view that Rule 7 offended Article 14 of the Constitution. However, in order to save the rule from being struck down, it applied the principle enunciated in ***Seaford Court Estates Ltd.***. Resultantly, Rule 7, which defined the expression 'local students' was tweaked to include students who had qualified from schools, located within the limits of AUDA as well.

18.4 The following observations, being apposite, are extracted hereafter:

"….13. Though the High Court was right in coming to the conclusion that the rule in question does suffer from an element of arbitrariness, we are of the opinion that the remedy does not lie in striking down the impugned rules the existence of which is necessary in the larger interest of the institution as well as the populace of the Ahmedabad Municipal Corporation. The striking down of the rule would mean opening the doors of the institution for admission to all the eligible candidates in the country which would definitely be opposed to the very object of the establishment of the institution by a local body. It is very rarely that a local body considers it as its duty to provide higher and professional education. In this case, the Municipality of Ahmedabad should be complimented for providing medical education to its resident students for the last 30 years or more. It has complied with its constitutional obligation by providing 15% of the seats available to all-India merit students. Its desire to provide as many seats as possible to its students is a natural and genuine desire emanating from its municipal obligations which deserves to be upheld to the extent possible. Therefore, with a view to protect the laudable object of the Municipality, we deem it necessary to give the impugned rule a reasonable and practical interpretation and uphold its validity.

14. Before proceeding to interpret Rule 7 in the manner which we think is the correct interpretation, we have to bear in mind that it is not the jurisdiction of the court to enter into the arena of the legislative prerogative of enacting laws. However, keeping in mind the fact that the rule in question is only a subordinate legislation and by declaring the rule ultra vires, as has been done by the High Court, we would be only causing considerable damage to the cause for which the Municipality had enacted this rule. We, therefore, think it appropriate to rely upon the famous and oft-quoted principle relied on by Lord Denning in the case of Seaford Court Estates Ltd. v. Asher ([1949] 2 K.B. 481) wherein he held:

> *"[W]hen a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of*

> *Parliament, ... and then he must supplement the written word so as to give 'force and life' to the intention of the legislature. ... A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out ? He must then do as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases."*

<u>This statement of law made by Lord Denning has been consistently followed by this Court starting in the case of M. Pentiah v. Muddala Veeramallappa (AIR 1961 SC 1107) and followed as recently as in the case of S. Gopal Reddy v. State of A.P. (1996 (4) SCC 596, 608 : 1996 SCC(Cri) 792 : 1996 AIR(SC) 2184, 2188) (SCC at 608 : AIR at p. 2188)</u>. Thus, following the above rule of interpretation and with a view to iron out the creases in the impugned rule which offends <u>Article 14</u>, we interpret Rule 7 as follows:

> *"Local student means a student who has passed HSC (sic SSC)/New SSC Examination and the qualifying examination from any of the high schools or colleges situated within the Ahmedabad Municipal Corporation limits and includes a permanent resident student of the Ahmedabad Municipality who <u>acquires the above qualifications from any of the high schools or colleges situated within the Ahmedabad Urban Development Area....</u>"*

(emphasis is mine)

19 Therefore, the question before me is: should the Court, in such circumstances, fold its hands and deny a person, who has lost the stamp paper, relief only because the draftsman has omitted the use of such expression explicitly in the Statute. As noticed above, it is not unknown to law that when Courts have encountered such creases in the Statute they

have proceeded to iron them out without destroying the fabric which forms the core of the Statute. The expression "obliterate" appearing in Section 49(a) of the Act should, in my opinion, include cases where the Stamp paper is lost by an applicant seeking refund of stamp duty. This would be a 'reasonable' and 'practical' interpretation of Section 49(a) of the Act, as any other interpretation could lead to a situation where it may fall foul of Article 14 of the Constitution.

20 There is another way of looking at the matter, which is, the scheme of Chapter V of the Act. If the scheme, as discussed above, is kept in mind, respondents ought to refund stamp duty even in cases where an applicant claims refund of stamp duty on account of loss of e-stamp paper; subject to an enquiry establishing factum of loss and adequate safeguards being put in. To my mind, if the contrary view was sustained, it would result in the State retaining money without the authority of law, as admittedly, the taxing event had not occurred in the facts and circumstances of this case.

21 In the instant case, the petitioners have provided a photocopy of e-stamp paper dated 6.7.2016, which at the moment, is the best secondary evidence available with it, which, shows that the e-stamp paper was not engrossed.

21.1 Given the foregoing discussion, clearly, the amount retained by the respondents cannot be in the nature of tax as the taxing event has not occurred in the instant case. It cannot be also in the nature of fee as there was no *quid pro quo*.

21.2 In any event, the stand of the respondents is that the stamp duty is in the nature of tax. If that be the position, could the respondents retain money in anticipation of the taxing event occurring? Article 265 of the Constitution provides that no tax shall be levied or collected except by authority of law. Therefore, emphasis is not only on no tax being levied without the authority of law, but is also on collection of tax without authority of law.

22 Therefore, in my view, the continued retention of amount paid towards anticipated stamp duty in the hands of the respondents is illegal. The apprehension expressed by the respondents that there was a possibility of the lost e-stamp paper being mis-utilized seems to be tenuous for the following reasons:

(i) First, the particulars of the transaction, parties and the consideration have already been incorporated in the lost e-stamp paper.

(ii) Second, with the technological innovation in place, the said information would be available and anyone trying to use the lost e-stamp paper can easily be found out. In any event, the fact the lost e-stamp paper dated 06.07.2016 adverts to the same property qua which sale transaction stands effected via the new stamp paper dated 06.08.2016, the possibility of misuse of the old e-stamp paper dated 06.07.2016, to my mind, does not arise.

(iii) The lost e-stamp paper dated 06.07.2016 having been locked and cancelled, there is, to my mind, given the technology in place, no possibility of the lost e-stamp paper being mis-utilized. The Collector of Stamps invariably checks the website of Stock Holding Corporation Ltd. to ascertain whether or not the stamp paper is genuine. The order dated 11.03.2015, passed by the Divisional Commissioner, clearly casts such an obligation on the Collector of Stamps.

(iv) Lastly, in any case, the petitioners have furnished an indemnity bond, and therefore, loss or damages, if any, suffered by the respondents can always be recovered.

23 Before I proceed further, I need to touch upon the argument raised by Mr. Ramesh Singh that the view held by a Single Judge of this Court in ***Piyush Aggarwal's*** *case* requires reconsideration. This was a case where the petitioners had sought refund of stamp duty on account of the fact that before the instrument on which the stamp duty was leviable, was executed, by virtue of a notification issued by the State, the stamp duty and transfer duty on conveyance had been substantially reduced. Since, the petitioners had paid excess stamp duty and transfer duty, they sought refund of the same.

23.1 The facts, as gleaned from the judgment, would show that the conveyance i.e. the instrument, in that case, was executed on 30.06.2003, whereas the notification, reducing the stamp duty and transfer duty, was issued on 19.05.2003.

23.2 The Court was, thus, called upon to adjudicate two aspects: First, as to when, did the chargeable event occur? Second, whether in the given circumstances, the petitioners claim for refund of excess stamp duty and transfer duty was sustainable?

23.3 Insofar as the first aspect was concerned, the Court ruled that the chargeable event, for levy of stamp duty, would occur on the date of execution of the instrument and not on the date of adjudication or the date of presentation, which, in that case were events which occurred prior to the date of the notification, whereby the stamp duty and transfer duty charges were reduced by the State.

23.4 Insofar as the second issue was concerned, the Court held that Section 52 which allows, inter alia, for refund of stamp duty in cases where a person, inadvertently, uses on an instrument chargeable with duty, a stamp of a description other than that prescribed for such an instrument — was available to the petitioners for refund of stamp duty. According to the Court, if the date of execution of the instrument is taken as the date which would determine as to what would be the admissible stamp duty that had to be levied on the instrument (i.e. the conveyance) then, the petitioner's case would fall within the ambit of the provisions of Section 52 of the Act, as excess duty had been, inadvertently, paid by the petitioners since the notification reducing the rate of stamp duty and transfer duly stood published prior to the execution of the instrument in that case.

23.5 This apart, the Court observed that even if it is assumed that Section 52 of the Act was not applicable, the petitioners would be entitled to refund of stamp duty as the State could not retain the stamp duty in view of the provision of Article 265 of the Constitution. The relevant observations made by the Court are as follow:

> *"....11. Even as regards applicability of Section 52 of the Act, the matter can be looked at in another perspective. The "chargeable event" being the date of execution of the document and if on that date higher than the admissible stamp duty is levied or collected, it would fall within the ambit of excess payment being "inadvertently" collected on the said date from the petitioner. Thus, it could even be urged that Section 52 of the Act was applicable. Further as noticed earlier dehors the applicability of Section 52 of the Act, stamp duty collected without authority of law cannot be retained in terms of Article 265 of the Constitution of India in the absence of any statutory provision requiring refund application to be submitted within a specified period or prohibiting the refund unless made within the specified period. In the instant case, it may be noted, that application for refund had been made within the stipulated period of six months under Section 52 of the Act....."*
>
> (Emphasis is mine)

23.6 Having regard to the facts which obtained in ***Piyush Aggarwal's*** case and enunciation of law by the Court, I am not persuaded to hold that the judgment requires reconsideration, as was contended by Mr. Ramesh Singh. To my mind, the ambit and scope of Article 265 of the Constitution is not restricted only to cases where the Court finds that the levy imposed by the State is illegal or unconstitutional. As adverted to above, Article 265 of the Constitution, not only imposes a bar on imposition of tax without the authority of law, it also imposes a prohibition on collection of tax without the authority of law.

23.7 In my opinion, the other contention of Mr. Ramesh Singh that the Court in ***Piyush Aggarwal's*** case failed to notice the legal regime of the Act, is also not correct in view of the fact that the Court did notice the relevant provisions, which were necessary for adjudication of the matter at hand.

23.8 The other submission of Mr. Ramesh Singh, that the Act is a complete code by itself and that refund could only be ordered in respect of instances provided in the Act, has been answered by me hereinabove. The rationale employed by me is that the scheme of Chapter V of Act which adverts to allowances and refunds is required to be interpreted in a manner that the Statute does not fall foul of the Constitution.

23.9 Therefore, in that sense, the other argument of Mr. Ramesh Singh that the Collector of Stamps is a creature of the Statute and can, therefore, only operate within its periphery, has to be answered, in my opinion, in the same vein. While one cannot quibble with the proposition that the statutory authority has to necessarily act within the ambit of the statute which forms the basis of its nativity, the extent and amplitude of its power will, however, be governed by the provision of the Constitution. There being no prohibition in the Act for grant of refund for lost stamp paper, surely the Collector of Stamps cannot collect or retain what lawfully does not belong to the State.

24 Interestingly, our neighbouring country i.e. Pakistan, which has a somewhat similar Statute, dealing with the levy collection and refund of stamp duty, is beset with difficulties which are akin those faced by applicant(s), in our country, seeking refund of stamp duty on account of loss of stamp paper. This aspect, I came across upon a judgment dated 23.02.2016, delivered by the Lahore High Court, in Writ Petition No.27935 of 2012, titled: ***Aziz Ullah Khan Vs. Government of the Punjab etc,*** being brought to my notice.

24.1 The Court in that case was faced with a question as to whether refund of stamp duty ought to be ordered in a case where the petitioners had misplaced i.e. lost the stamp papers.

24.2 The Additional Advocate General resisted the writ petition, broadly, on the ground that there was no provision for grant of refund of stamp paper, in cases where it was lost and that if such a relief was granted, it would result in loss to the national exchequer.

24.3 I must confess that, though, in that case, the Court noticed the existence of Rule 5 of the Punjab Non Judicial Stamp Refund, Renewal and Disposal Rules, 1954 which provided for refund of stamp duty in case of its loss, *albeit*, in specified circumstances i.e., where stamp paper was stolen or lost in transit by Government officials. The Court, after noting that there was a discrimination, inasmuch as, Rule 5 permitted write off where stamp papers were lost by public functionaries, whereas, a similar facility was not given to private person, went on to deal with the other arguments, that is, whether it could order refund in exercise of its constitutional powers in the absence of specific provision for refund, the possibility of loss to the national exchequer, as also misuse of stamp paper, in the following manner:

> *".....It is very strange to note that the public functionaries, in the event of loss of Stamp Papers in transit, have been bestowed with a remedy to seek write off whereas the private persons have not been provided with such facility. This fact alone renders it crystal clear that a discriminatory treatment is being given by the public functionaries to their own brethren in the event of loss of stamp papers whereas the request of a member of society is not being entertained merely for the reason that the original are not available. Such approach, being in conflict with the clear cut mandate given under Article 25 of the Constitution of Islamic Republic of Pakistan, 1973, cannot be encouraged rather deserves to be discouraged.*
>
> *10. Learned Additional Advocate General has adopted the plea that when the statute has not allowed any refund in case of loss of Stamp Papers the same cannot be permitted by this Court in exercise of Constitutional jurisdiction vested under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. In this respect I am of the view that according to the golden principle of interpretation of a statute, a beneficial approach should be followed. As far as the case in hand is concerned, when a via media has been provided in the event of loss of Stamp Papers during transit by the public functionaries, how the petitioner can be deprived of such facility. It is not the case of the respondents that the case of the petitioner is not covered under Rule 32 of the Rules, 1954. The apex Court of the country, in H.R.C. No.40927-S of 2012 Application by Abdul Rehman Farooq Pirzada (PLD 2013 SC 829) while highlighting the principles of interpretation of statutes by the superior Courts has inter-alia held as under: -*
>
> > *"The interpretation cannot be narrow and pedantic but the Courts' efforts should be to*

> *construe the same broadly, so that it may be able to meet the requirements of an ever changing society. The general words cannot be construed in isolation but the same are to be construed in the context in which they are employed. In other words, their colour and contents are derived from the context."*

Further, a Full Bench of this Court in the case of Rub Nawaz Dhadwana Advocate etc. v. Rana Muhammad Akram Advocate etc. (W.P. No.16793 of 2014) while dealing with the powers of the superior Courts to abridge the distance between the legislator and the public-at-large has inter-alia observed as under:

> *"The judge must reflect these fundamental values in the interpretation of legislation. The judge should not narrow interpretation to the exclusive search for subjective legislative intent. He must also consider the "intention" of the legal system, for the statute is always wiser than the legislature. By doing so the judge gives the statute a dynamic meaning and thus bridges the gap between law and society."*

If refusal on the part of the respondents to issue refund in favour of the petitioner is adjudged on the touchstone of aforequoted cases, I am of the humble opinion that the same is not tenable for the reason that when the legislator has framed rules for refund of spoiled/unused/lost Stamp Papers, how the respondents can interpret said rules according to their own whims just to damage the case of the claimants.

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In this scenario, the objection raised by the learned Additional Advocate General that the refund is not permissible without production of original Stamp Papers is of no worth at all. The bonafide of the petitioner is apparent from the fact that after loss of original Misplaced Stamp Papers he not only *reported matter to the Police with promptitude but also got published proclamation in daily "Smaj" and having done so he, with a view to avoid further delay towards execution of sale deed, got issued fresh Stamp Papers to complete the sale transaction. A copy of the sale deed provided by the above named deed writer shows that the Misplaced Stamp Papers were used for the said purpose but due to their loss during journey sale deed could not be registered. The logic behind issuance of refund against the spoiled, destroyed or unused Stamp Papers is to accommodate a person who has not used those Stamp Papers for the purpose for which the same were issued. In the case in hand after admission by the respondents that neither the Misplaced Stamp Papers were used for any other purpose nor anybody else has claimed refund in that regard, the request of the petitioner cannot be turned down merely on the ground that he could not produce the original Misplaced Stamp Papers before the competent authority. If the original Stamp Papers were available with the petitioner there was no necessity for him to incur another sum of more than one million rupees for the same purpose.*

12. Learned Additional Advocate General has forcefully argued that worth of the Stamp Papers is equal to those of currency notes and no refund against the currency notes is permissible in case where the original are not produced. To the extent of worth of Stamp Papers equal to currency notes, I agree with the learned law officer, however, to the extent of criteria explained by him regarding refund of currency notes I have contrary view for the reason that in case of currency notes its custodian is always considered its lawful owner and it cannot be proved as to which specific currency note was in possession of a particular person whereas in the case of Stamp Papers entitlement of a person can be certified firstly from the National Exchequer where price of the Stamp Papers has been deposited, secondly from the register of Stamp Vendor and thirdly from the authorities before whom the same was presented. Insofar as the case in hand is concerned, all the *authorities have admitted that the Misplaced Stamp Papers were issued to the petitioner after payment of consideration and those were never utilized for any other purpose. In this view of the matter, the objection posed by the learned Law Officer is hereby spurned.*

13. Now taking up plea of learned Additional Advocate General that in case refund is allowed in absence of original Stamp Papers not only scrupulous persons would be able to use them for any other purpose but they would also succeed to get refund while causing colossal loss to the National Exchequer. In this regard, I am of the view that strict criteria can be laid to avoid such apprehension but in no way same can be made a ground to deprive a person from refund of the amount whose claim has been admitted by the relevant forums. In case the respondents have the apprehension that the Misplaced Stamp Papers were or would be used for any other purpose they can proceed against the culprit under the relevant law in addition to getting registered a criminal case against the petitioner.

14. Admittedly, the Misplaced Stamp Papers were used for preparation of sale deed as is evident from the recitals of copy of sale deed (Annexure-C of this petition), thus, the possibility of using the Misplaced Stamp Papers for any other purpose is totally ruled out. Moreover, execution of sale deed by the petitioner on subsequently purchased Stamp Papers also eliminates said apprehension as the land once sold cannot be resold on the strength of Stamp Papers got issued in that regard.

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16. The learned Additional Advocate General has mainly opposed prayer of the petitioner on the premise that there is no provision either in the Act, 1899 or in the Rules, 1954, regarding a private person, in case of loss of original Stamp Papers. In this regard, I am of the view that in view of principle ubi jus ibi remedium (where there is a right there is a remedy) nobody can be left remediless. The said principle has also been *elucidated by the apex Court of the country in the case of* ***Sarfraz Saleem v. Federation of Pakistan and others (2014 PLC C.S. 884)*** *in the following words: -*

> *"In these circumstances, lack of exercise of jurisdiction by the High Court in the present case seems to be contrary to the well accepted principle "ubi jus ibi remedium" (where there is a right there is a remedy) and the spirit of Articles 4 and 10-A of the Constitution, meant to safeguard the rights of every individual/person to be dealt with in accordance with law"*

<u>The afore-quoted portion of the judgment of apex Court of the country renders it more than clear that nobody can be left remediless. Moreover, while dealing with the matters of masses they cannot be penalized due to stagnant attitude of the legislator about new Issues. Insofar as case in hand is concerned, request of the petitioner deserves sympathetic consideration for the reason that after completion of codal formalities his request has been turned down mainly on the ground that original Stamp Papers have not been produced.</u> At the cost of repetition it is observed that when the legislator itself has held that Collector can refer matter of refund against unused stamp papers even without producing the original one the stubbornness on the part of competent authority in this regard is not understandable. Public functionaries are supposed to eliminate difficulties of public-at-large but when they themselves try to impede their way to have their legitimate right the entire threadbare of our society would be devastated.

17. Now taking up plea of learned Additional Advocate <u>General that if refund is allowed even in cases where the original Stamp Papers are not produced the National Exchequer would suffer badly, I am of the view that the respondents are not going to pay anything either from their own pockets or from the National Exchequer either they have to repay the amount twice deposited by the petitioner. Had the</u>

petitioner claimed anything in addition to that he deposited at the time of issuance of Stamp Papers then the said contention would have some substance. Considering from another angle in the cases where spoiled or unused Stamp Papers are returned by the persons concerned they are issued refund without taking into consideration that the said amount is being repaid from the National Exchequer. This fact alone amounts to discrimination on the part of competent authority......"

(Emphasis is mine)

25 As would be noticed, the ***Aziz Ullah Khan***'s case, on facts, was *pari materia* with the facts obtaining in the instant case. In that case, the stamp paper was lost, which was required for consummation of the sale transaction concerning the subject immovable property. The petitioner, as in the instant case, had bought a new stamp paper and had gone on to consummate the sale transaction qua the very same property.

26 I may also indicate that insofar as other cases cited by Mr. Ramesh Singh are concerned, they are, in fact, not applicable to the facts and circumstances arising in the instant case. One cannot but state that the proposition of law as enunciated in ***Mafatlal Industries Ltd. & Ors. vs. Union of India & Ors.***; ***State of Maharashtra & Ors. vs. Swanstone Multiplex Cinema Pvt. Ltd.*** and ***Cooch-Behar Contractors' Association and Ors. vs. State of West Bengal & Ors.*** still hold the field.

26.1 However, dealing with the last case first i.e. ***Cooch-Behar Contractors' Association case***, that was a case where the appellants before the Supreme Court sought exclusion of certain components, which had been included in the expression "contractual transfer price", which in turn, determined the tax that an assessee had to pay under works contract. In this context, the Court was called upon to interpret, *inter alia*, the provisions of Section 6D of the Bengal Finance (Sales Tax) Act, 1941 as amended by West Bengal Act 4 of 1984. The Court ruled that nothing could be excluded from contractual transfer price over and above that was indicated in Clauses (a) to (e) of sub-section 2 of Section 6D of the aforementioned Act. It is in this context that the Court observed that Section 6D was a self contained provision. In my view, there is nothing in the judgment, which would help the cause of the respondents.

26.2 Likewise, the judgment of the Supreme Court rendered in ***State of Maharashtra & Ors. case***, does not support the respondent's case. This was a case where the respondent company, which was the owner of multiplex cinema theatre had collected entertainment tax at rate of 45% during the period when it was either not liable to pay such tax or was required to pay tax at a concessional rate i.e., 25%. The State attempted to reclaim the benefit, which had accrued to the respondent company as they had recovered excess entertainment tax from the cinema goers. Consequently, demand notices were issued by the State in that behalf. The demand notices issued were challenged. The High Court allowed the writ petition. The Supreme Court reversed the decision of the High Court.

26.3 While doing so, the Supreme Court made an interesting distinction between the doctrine of unjust enrichment as opposed to doctrine of retention. While drawing a distinction between the two concepts, the

Supreme Court noticed several judgments, including the judgment rendered by the Court in ***Mafatlal Industries Ltd. case***. Pertinently, the Court, while allowing the appeal of the State, directed the State to remit undue benefit obtained by the respondent company to a voluntary or charitable organization, since, the State during that period, could not have levied or collected the tax from the respondent company. This aspect of the matter is reflected in Paragraphs 32, 33, 36 & 37. For the sake of convenience, the same are extracted hereafter:

> *"...32. In a given case, this Court in exercise of its jurisdiction under Article 142 of the Constitution of India may also issue other directions, as has been done in Indian Banks' Assn. v. Devkala Consultancy Service [(2004) 11 SCC 1] in a similar situation where it was difficult for the Court to direct refund of a huge amount to a large number of depositors from whom the bank had illegally collected, this Court directed that the amount be spent for the benefit of the disabled in terms of the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. This Court may take recourse to such a procedure as the State also having granted exemption was not entitled to collect the duty. In other words, it having granted an exemption, was not legally entitled thereto. We think that it would be a better course, as stricto sensu, Article 296 of the Constitution is not applicable.*
>
> *33. We are passing this order keeping in view the peculiar situation as in either event it was cinema-goers who had lost a huge amount. It would be travesty of justice if the owners of the cinema theatre become eligible to appropriate such a huge amount for their own benefit. To the aforementioned extent, doctrine of unjust enrichment may be held to be applicable. A person who unjustly enriches himself cannot be permitted to retain the same for its benefit except enrichment. Where it*

becomes entitled thereto the doctrine of unjust enrichment can be invoked irrespective of any statutory provisions.

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36. It may be true that hereat we are not concerned with refund of tax but then for enforcement of legal principles, this Court may direct a party to divest itself of the money or benefits, which in justice, equity and good conscience belongs to someone else. It must be directed to restitute that part of the benefit to which it was not entitled to.

37. We, therefore, direct that the State shall realise the amount to the extent the respondent had unjustly enriched itself and pay the same to a voluntary or a charitable organisation, which according to it is a reputed civil society organisation and had been rendering good services to any section of the disadvantaged people and in particular women and children. We would request the Hon'ble the Chief Minister of the State to take up the responsibility in this behalf so that full, proper and effective utilisation of the amount in question is ensured..."

(Emphasis is mine)

26.4 Insofar as ***Mafatlal Industries Ltd. case*** is concerned, the Supreme Court was considering the scope, ambit and extent to which doctrine of unjust enrichment would apply, the Court laid down various propositions of law, which I need not advert to as none of them, in my opinion, would help the cause of the respondent.

26.5 I may, however, indicate that the Court, *inter alia*, ruled that where the provisions of a statute provided for refund, the refund, if any, would be granted in accordance with the statute. The Court was, amongst others, considering the provisions of Section 11B of Central Excises Act and Section 27 of the Customs Act.

26.6 Likewise, ***Sri Maganti Suryanarayana case*** cited for the proposition, that there is no inherent jurisdiction vested in the Collector of Stamps to grant refund as he is a creature of the statute or the judgment rendered in ***Govt. of A.P. & Ors. vs. P. Laxmi Devi (Smt.) case*****,** cited for the proposition that there is no equity in tax are propositions, which have held the field for so long that they appear to be cast in stone. Having said so, the foregoing discussion would show that these propositions would not impede the cause of the petitioners, given the situation obtaining in the instant case.

27 Thus, to my mind, for the foregoing reasons, the denial of refund is unlawful. The writ petition is, accordingly, allowed partially. Accordingly, order dated 21.10.2016 is quashed.

28 Consequently, the respondents are directed to refund a sum of Rs.28,10,000/- to the petitioners within a period of two weeks from today.

29 There shall, however, be no order as to costs.

RAJIV SHAKDHER
(JUDGE)

AUGUST 20, 2018
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